

REFERENCE TITLE: **condominiums; planned communities; foreclosure limitation**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1008

Introduced by
Senator Waring

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1256, Arizona Revised Statutes, is amended to
3 read:

4 33-1256. Lien for assessments: priority: mechanics' and
5 materialmen's liens: applicability

6 A. The association has a lien on a unit for any assessment levied
7 against that unit from the time the assessment becomes due. The
8 association's lien for assessments, for charges for late payment of those
9 assessments, for reasonable collection fees and for reasonable attorney fees
10 and costs incurred with respect to those assessments may be foreclosed in the
11 same manner as a mortgage on real estate **BUT MAY BE FORECLOSED ONLY IF THE**
TOTAL AMOUNT OF UNPAID ASSESSMENTS IS FIVE THOUSAND DOLLARS OR MORE. Fees,
13 charges, late charges, monetary penalties and interest charged pursuant to
14 section 33-1242, paragraphs 10, 11 and 12, other than charges for late
15 payment of assessments, are not enforceable as assessments under this
16 section. If an assessment is payable in installments, the full amount of the
17 assessment is a lien from the time the first installment of the assessment
18 becomes due. The association has a lien for fees, charges, late charges,
19 other than charges for late payment of assessments, monetary penalties or
20 interest charged pursuant to section 33-1242, paragraphs 10, 11 and 12 after
21 the entry of a judgment in a civil suit for those fees, charges, late
22 charges, monetary penalties or interest from a court of competent
23 jurisdiction and the recording of that judgment in the office of the county
24 recorder as otherwise provided by law. The association's lien for monies
25 other than for assessments, for charges for late payment of those
26 assessments, for reasonable collection fees and for reasonable attorney fees
27 and costs incurred with respect to those assessments may not be foreclosed
28 and is effective only on conveyance of any interest in the real property.

29 B. A lien for assessments, for charges for late payment of those
30 assessments, for reasonable collection fees and for reasonable attorney fees
31 and costs incurred with respect to those assessments under this section is
32 prior to all other liens, interests and encumbrances on a unit except:

33 1. Liens and encumbrances recorded before the recordation of the
34 declaration.

35 2. A recorded first mortgage on the unit, a seller's interest in a
36 first contract for sale pursuant to chapter 6, article 3 of this title on the
37 unit recorded prior to the lien arising pursuant to subsection A of this
38 section or a recorded first deed of trust on the unit.

39 3. Liens for real estate taxes and other governmental assessments or
40 charges against the unit.

41 C. Subsection B of this section does not affect the priority of
42 mechanics' or materialmen's liens or the priority of liens for other
43 assessments made by the association. The lien under this section is not
44 subject to ~~the provisions of~~ chapter 8 of this title.

1 D. Unless the declaration otherwise provides, if two or more
2 associations have liens for assessments created at any time on the same real
3 estate, those liens have equal priority.

4 E. Recording of the declaration constitutes record notice and
5 perfection of the lien for assessments, for charges for late payment of those
6 assessments, for reasonable collection fees and for reasonable attorney fees
7 and costs incurred with respect to those assessments. Further recordation of
8 any claim of lien for assessments under this section is not required.

9 F. A lien for unpaid assessments is extinguished unless proceedings to
10 enforce the lien are instituted within three years after the full amount of
11 the assessments becomes due.

12 G. This section does not prohibit actions to recover sums for which
13 subsection A of this section creates a lien or does not prohibit an
14 association from taking a deed in lieu of foreclosure.

15 H. A judgment or decree in any action brought under this section shall
16 include costs and reasonable attorney fees for the prevailing party.

17 I. The association on written request shall furnish to a lienholder,
18 escrow agent, unit owner or person designated by a unit owner a statement
19 setting forth the amount of unpaid assessments against the unit. The
20 statement shall be furnished within fifteen days after receipt of the request
21 and the statement is binding on the association, the board of directors and
22 every unit owner if the statement is requested by an escrow agency that is
23 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
24 the escrow agent within the time provided for in this subsection shall
25 extinguish any lien for any unpaid assessment then due.

26 J. The association shall record in the office of the county recorder
27 in the county in which the condominium is located a notice stating the name
28 of the association or designated agent or management company for the
29 association, the address for the association and the telephone number of the
30 association or its designated agent or management company. The notice shall
31 include the name of the condominium community, the date of the recording and
32 the recorded instrument number or book and page for the main document that
33 constitutes the declaration. If an association's address, designated agent
34 or management company changes, the association shall amend its notice or
35 record a new notice within ninety days after the change.

36 K. Notwithstanding any provision in the condominium documents or in
37 any contract between the association and a management company, unless the
38 member directs otherwise, all payments received on a member's account shall
39 be applied first to any unpaid assessments, for unpaid charges for late
40 payment of those assessments, for reasonable collection fees and for unpaid
41 attorney fees and costs incurred with respect to those assessments, in that
42 order, with any remaining amounts applied next to other unpaid fees, charges
43 and monetary penalties or interest and late charges on any of those amounts.

44 L. This section does not apply to timeshare plans or associations that
45 are subject to chapter 20 of this title.

1 Sec. 2. Section 33-1807, Arizona Revised Statutes, is amended to read:
2 33-1807. Lien for assessments: priority: mechanics' and
3 materialmen's liens

4 A. The association has a lien on a unit for any assessment levied
5 against that unit from the time the assessment becomes due. The
6 association's lien for assessments, for charges for late payment of those
7 assessments, for reasonable collection fees and for reasonable attorney fees
8 and costs incurred with respect to those assessments may be foreclosed in the
9 same manner as a mortgage on real estate **BUT MAY BE FORECLOSED ONLY IF THE**
10 **TOTAL AMOUNT OF UNPAID ASSESSMENTS IS FIVE THOUSAND DOLLARS OR MORE.** Fees,
11 charges, late charges, monetary penalties and interest charged pursuant to
12 section 33-1803, other than charges for late payment of assessments, are not
13 enforceable as assessments under this section. If an assessment is payable
14 in installments, the full amount of the assessment is a lien from the time
15 the first installment of the assessment becomes due. The association has a
16 lien for fees, charges, late charges, other than charges for late payment of
17 assessments, monetary penalties or interest charged pursuant to section
18 33-1803 after the entry of a judgment in a civil suit for those fees,
19 charges, late charges, monetary penalties or interest from a court of
20 competent jurisdiction and the recording of that judgment in the office of
21 the county recorder as otherwise provided by law. The association's lien for
22 monies other than for assessments, for charges for late payment of those
23 assessments, for reasonable collection fees and for reasonable attorney fees
24 and costs incurred with respect to those assessments may not be foreclosed
25 and is effective only on conveyance of any interest in the real property.

26 B. A lien for assessments, for charges for late payment of those
27 assessments, for reasonable collection fees and for reasonable attorney fees
28 and costs incurred with respect to those assessments under this section is
29 prior to all other liens, interests and encumbrances on a unit except:

30 1. Liens and encumbrances recorded before the recordation of the
31 declaration.

32 2. A recorded first mortgage on the unit, a seller's interest in a
33 first contract for sale pursuant to chapter 6, article 3 of this title on the
34 unit recorded prior to the lien arising pursuant to subsection A of this
35 section or a recorded first deed of trust on the unit.

36 3. Liens for real estate taxes and other governmental assessments or
37 charges against the unit.

38 C. Subsection B of this section does not affect the priority of
39 mechanics' or materialmen's liens or the priority of liens for other
40 assessments made by the association. The lien under this section is not
41 subject to chapter 8 of this title.

42 D. Unless the declaration otherwise provides, if two or more
43 associations have liens for assessments created at any time on the same real
44 estate those liens have equal priority.

1 E. Recording of the declaration constitutes record notice and
2 perfection of the lien for assessments, for charges for late payment of
3 assessments, for reasonable collection fees and for reasonable attorney fees
4 and costs incurred with respect to those assessments. Further recordation of
5 any claim of lien for assessments under this section is not required.

6 F. A lien for an unpaid assessment is extinguished unless proceedings
7 to enforce the lien are instituted within three years after the full amount
8 of the assessment becomes due.

9 G. This section does not prohibit:

10 1. Actions to recover amounts for which subsection A of this section
11 creates a lien.

12 2. An association from taking a deed in lieu of foreclosure.

13 H. A judgment or decree in any action brought under this section shall
14 include costs and reasonable attorney fees for the prevailing party.

15 I. On written request, the association shall furnish to a lienholder,
16 escrow agent, unit owner or person designated by a unit owner a statement
17 setting forth the amount of any unpaid assessment against the unit. The
18 association shall furnish the statement within fifteen days after receipt of
19 the request, and the statement is binding on the association, the board of
20 directors and every unit owner if the statement is requested by an escrow
21 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
22 the statement to the escrow agent within the time provided for in this
23 subsection shall extinguish any lien for any unpaid assessment then due.

24 J. The association shall record in the office of the county recorder
25 in the county in which the planned community is located a notice stating the
26 name of the association or designated agent or management company for the
27 association, the address for the association and the telephone number of the
28 association or its designated agent or management company. The notice shall
29 include the name of the planned community, the date of the recording and the
30 recorded instrument number or book and page for the main document that
31 constitutes the declaration. If an association's address, designated agent
32 or management company changes, the association shall amend its notice or
33 record a new notice within ninety days after the change.

34 K. Notwithstanding any provision in the community documents or in any
35 contract between the association and a management company, unless the member
36 directs otherwise, all payments received on a member's account shall be
37 applied first to any unpaid assessments, for unpaid charges for late payment
38 of those assessments, for reasonable collection fees and for unpaid attorney
39 fees and costs incurred with respect to those assessments, in that order,
40 with any remaining amounts applied next to other unpaid fees, charges and
41 monetary penalties or interest and late charges on any of those amounts.